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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/406,290	09/24/1999	JEFFREY K. DELLINGER	37168/82045	1448

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EXAMINER

CUFF, MICHAEL A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 03/18/2004

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 17

Application Number: 09/406,290  
Filing Date: September 24, 1999  
Appellant(s): DELLINGER, JEFFREY K.

\_\_\_\_\_  
Bobby Gillenwater  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/22/03.

Art Unit: 3627

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The appellant's statement in the brief that certain claims do not stand or fall together is moot because appellant, on page 11 of the brief, chooses not to advance arguments of dependent claims being separately patentable.

For the purposes of this appeal, claims 1-43 stand or fall with claims 1 and 4. Claims 1 and 4 are the only claims argued in the brief.

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

US005933815A	GOLDEN	8-1999
US006253192B1	CORLETT et al.	6-2001
US006064986A	EDELMAN	5-2000

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 10.

Claim 4 is rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 10.

Art Unit: 3627

**(11) Response to Argument**

On page 5 of appellant's brief, appellant asserts "Further, both appellant and the examiner agree that the computerized method and system disclosed by Golden relates to a fixed annuity plan." The examiner does not concur. The examiner never agreed to any such statement. Golden, column 9, lines 40-41, "the client specifies the type of payment plan desired,..." Any assumptions by appellant to restrict the Golden reference to only a fixed annuity plan are erroneous. In addition, no variation of the word "fix" is located in the Golden reference. Appellant was probably confused because of Golden's example, If the client selected a payment plan which provides for level periodic distributions ...

Appellant asserts, page 6, a definition for a "fixed annuity" and a definition for a "variable annuity". Appellant further asserts that fixed annuities and variable annuities are distinct and separate products. These assertions are not relevant because a "variable annuity" has not been positively recited in the methods claims.

The argument over a fixed annuity being a special case of a variable annuity is moot because it is not directed to the claim limitations.

Note, at this point, appellant has not cited a claimed step which is not shown by the combination of Golden and Corlett.

Appellant asserts that it would not be obvious to one of ordinary skill in the art to modify the method of Golden because there would be no motivation. The examiner does not concur. Appellant is basing the argument on the contention that "It is undisputed that Golden relates to a fixed annuity plan." It is disputed as previously

Art Unit: 3627

argued. The Golden client specifies the type of payment plan desired. The Corlett system teaches a dynamic payment plan so that the necessary adjustments to the planned future financial situation can be made (column 10, lines 5-6, explicit motivation). Golden's disclosure is open to a payment plan of the client's desire. Corlett provides a plan with an attractive feature of adapting a payment plan to adjust payment amounts by comparing the actual interest rates with the planned rates. This is done to ensure a minimum amount of allocation determined by the client. It would be obvious for a client of Golden to specify a payment plan taking advantage of a feature of the plan of Corlett.

Appellant asserts, in his affidavit and in the brief (bottom page 8), that the "method of personal financial planning such as disclosed by Corlett cannot, and would not, be used by an insurance company, or other plan provider, to determine the amounts of payments, nor to determine whether a 'target' has been met (or exceeded) nor for any other purpose." The argument continues, "This statement of fact by one of skill in the art is uncontroverted in this record." The examiner does not concur. The statement is a self-serving statement of opinion, not fact. There is no reasoning provided as to why some features of Corlett cannot, and would not, be used. This could be attributed to appellant's misconception that Golden is limited to a fixed annuity.

Appellant asserts that the rejections of 1-3 and 7-43 all rest on erroneous conclusions (page 9). Appellant's argument is totally based on the premise that Golden describes only a fixed annuity plan. Pigeon holing Golden as only being a fixed annuity

Art Unit: 3627

plan has caused appellant to jump to erroneous conclusions. Appellant, still, has failed to identify a claim step, which is not shown by the prior art.

On pages 9-11 of the brief, appellant continues on the erroneous assumption that Golden is directed exclusively to fixed annuities. The arguments are the same as before.

Appellant asserts that the examiner trivializes the conditions of withdraw rate is less than a predetermined maximum or the account value balance is greater than zero. These conditions are trivial. Arguments can be made that both are trivial, but the manner in which the claims are alternatively recited, if either is shown, the claim has been met.

"the account value balance is greater than zero"

If you don't have money left in an account, you can't withdraw money from the account. This is not a ground-breaking phenomena and would be obvious to one of ordinary skill in the art.

Art Unit: 3627

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

*Michael Cuff* 3/16/04  
Michael Cuff  
March 16, 2004

Conferees

J. Trammell

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